

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

March 25, 2004

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. CENT 2003-94-M
ADMINISTRATION (MSHA)	:	A.C. No. 41-04325-05501
	:	Docket No. CENT 2003-95-M
v.	:	A.C. No. 41-04014-05505
	:	Docket No. CENT 2003-96-M
SOUTH TEXAS AGGREGATES, INC.	:	A.C. No. 41-03696-05519

BEFORE: Duffy, Chairman; Beatty, Jordan, Suboleski, and Young, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (“Mine Act”).<sup>1</sup> On December 5, 2002, the Commission received from South Texas Aggregates, Inc. (“South Texas”) a request for fine reductions, which we construe as a request to reopen penalty assessments that had become final Commission orders pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

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<sup>1</sup> Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers CENT 2003-94-M, CENT 2003-95-M, and CENT 2003-96-M, all captioned *South Texas Aggregates, Inc.* and all involving issues similar to those addressed in this order. 29 C.F.R. § 2700.12

In its request, South Texas, apparently proceeding pro se, states that it mistakenly responded to proposed penalty assessments it received by sending a letter, dated October 21, 2002, to the Department of Labor's Office of the Solicitor in Dallas, Texas, requesting fine reductions for the penalty assessments. Mot., Attach. at 1. South Texas asserts that it realized its error when a representative of the Solicitor's Office called to say she did not have copies of the citations mentioned in the letter. Mot. The proposed penalty assessments were issued between May 31 and August 30, 2002, by the Department of Labor's Mine Safety and Health Administration. Attach at 3. We note that, when South Texas sent its October 21 letter to the Office of the Solicitor, the proposed penalty assessments had already become final orders of the Commission pursuant to section 105(a) of the Mine Act. The Secretary states that she does oppose South Texas' request for relief.

We have held that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) ("*JWR*"). In evaluating requests to reopen final section 105(a) orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure under which, for example, a party could be entitled to relief from a final order of the Commission on the basis of inadvertence or mistake. *See* 29 C.F.R. § 2700.1(b) ("the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure"); *JWR*, 15 FMSHRC at 787. We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Having reviewed South Texas' request, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for South Texas' failure to timely contest the penalty proposals and whether relief from the final orders should be granted. If it is determined that such relief is appropriate, this case shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

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Michael F. Duffy, Chairman

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Robert H. Beatty, Jr., Commissioner

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Mary Lu Jordan, Commissioner

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Stanley C. Suboleski, Commissioner

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Michael G. Young, Commissioner

Distribution

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